

The Office of Solid Waste and Emergency Response

State and Tribal Role in Superfund

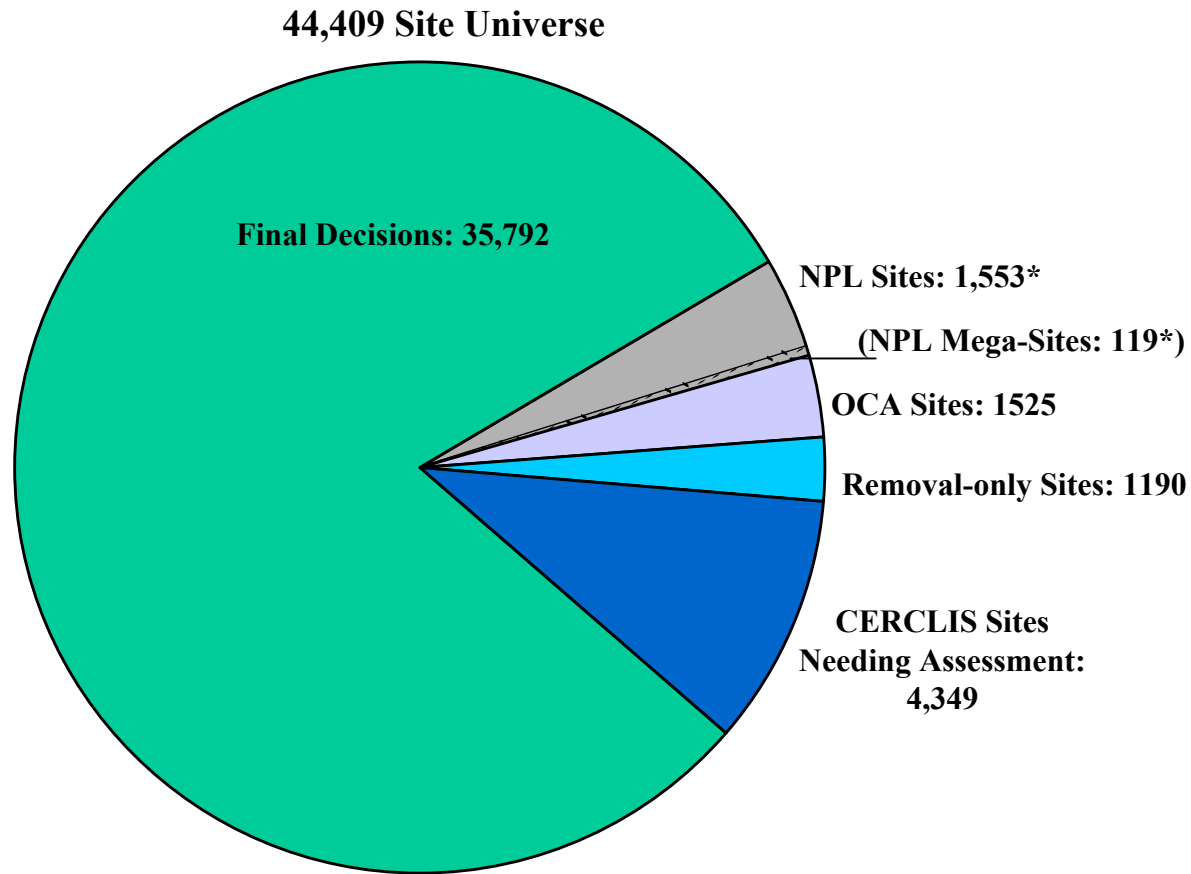
A Background Briefing

for the

National Advisory Committee for Environmental Policy and Technology

(NACEPT)

EPA Superfund is a Small Portion of Known Site Cleanups



- There are " 600,000 suspected waste sites. ¹
- Close to 30,000 sites have been addressed by States or EPA removal action. ²
- Another 44,409 have come to EPA for assessment/action.³
- The NPL has 1553 sites, current, proposed and deleted.

* Current, Proposed, and Deleted

Sources: 1. Grant Cope, USPIRG, testimony, April 10, 2002. 2. Environmental Law Institute, *An Analysis of State Superfund Programs: 50-State Study, 2000 Update*, Table IV-4 3. E-Facts as of 6/6/02,

Role of States under CERCLA

CERCLA as amended in 1986 (PL 96-510, SARA)

- Section 121 (f)
 - Provides for substantial and meaningful state involvement in decision-making.
 - Compliance with ARARs (or waivers)
- Section 104
 - Provides State cost share on fund financed remedial actions and assumption of Operation and Maintenance (O&M)
 - Requires other state assurances related to real property, a 20 year waste capacity, and where needed, availability of a disposal facility.
 - Provides funding for participation in CERCLA response actions.

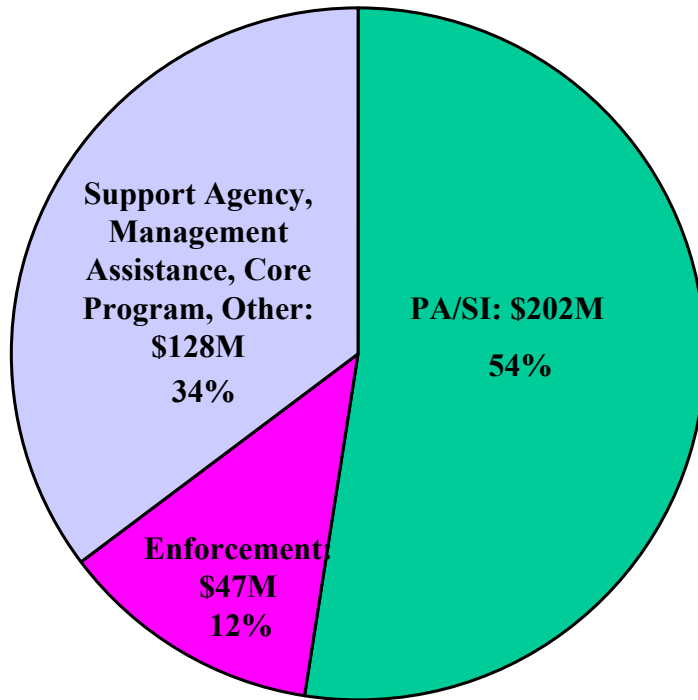
CERCLA as amended in 2002 (PL 107-118, SBLRBRA)

- Section 128
 - Support for State response programs
 - Bars CERCLA Enforcement for certain sites with eligible response under State program if public record is maintained.
 - Clarifies NPL deferral program

Funding to States/Tribes Has Diversified in the Last 7 Years

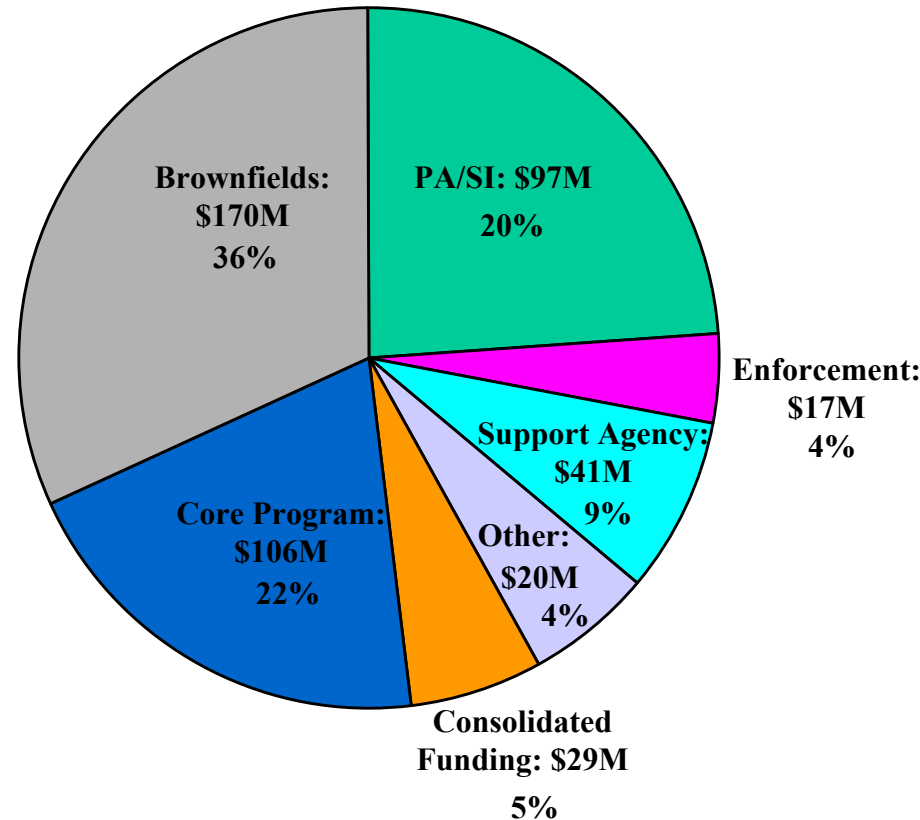
Note: These charts reflect funding provided through the following Cooperative Agreement types: Preliminary Assessment/Site Investigation (PA/SI); Enforcement; Support Agency; Core Program; Consolidated Funding; and Other.

FY 1988–FY 1995



Cumulative Funding to States and Tribes,
FY 1988 – FY 1995: **\$377M**

FY 1996–FY 2002



Cumulative Funding to States and Tribes,
FY 1996 – FY 2002: **\$480M**

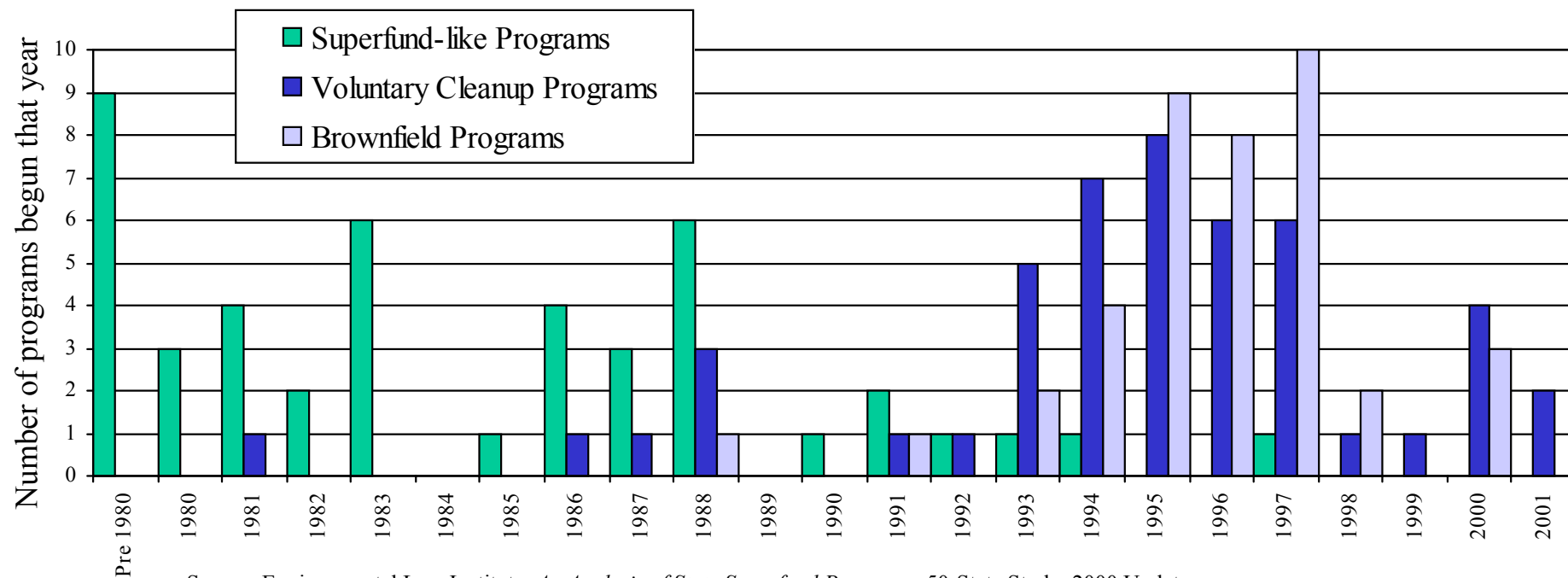
Total Funding: \$857M

Source: IFMS as of 5/08/02

State Role in Getting Sites to the NPL

- States have conducted close to half the assessments for possible NPL sites.
- Consultation with States and Governors on NPL listing has occurred since FY 1996.
- Worksharing agreements – formal and informal deferrals (The Brownfields law clarifies deferral).

The Initiation of State Cleanup Programs Has Accelerated Over the Last Ten Years

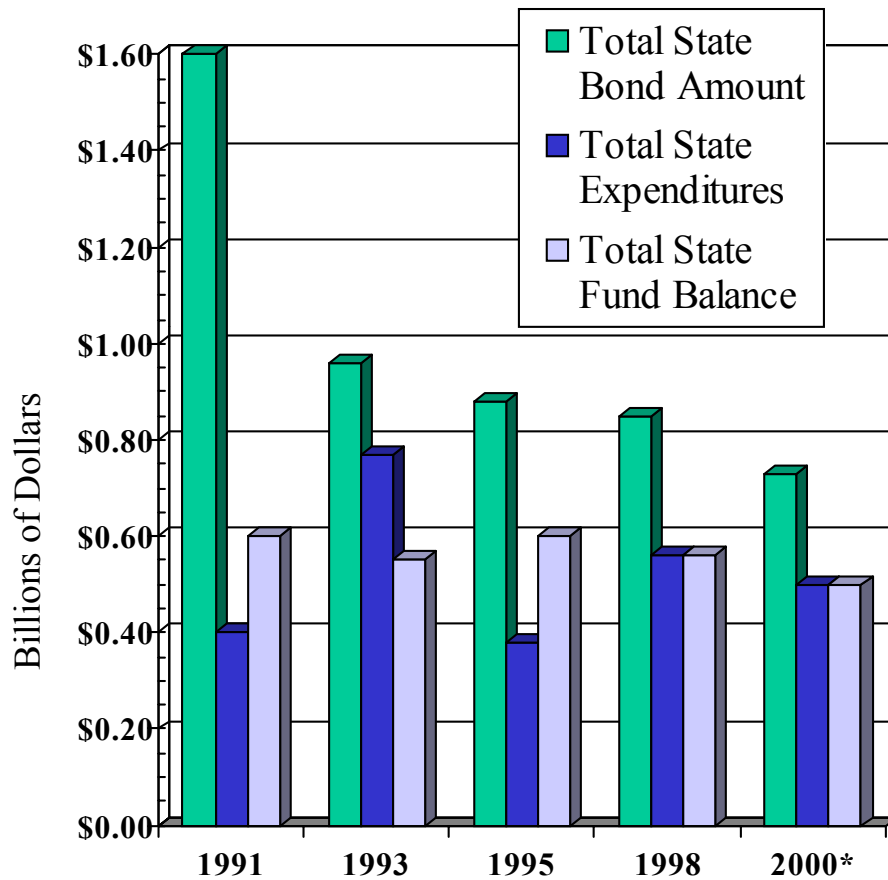


Source: Environmental Law Institute, *An Analysis of State Superfund Programs: 50-State Study, 2000 Updates*

State Role in Getting Sites to the NPL

- Many VCP's were developed with Superfund seed money.
- State GIS systems are funded by EPA.
- Enhanced State Role pilots were designed to pick up interest wherever States wanted joint work teams (ex. SC).

Changes to States Superfund Program Funds and Expenditures 1991 - 2000

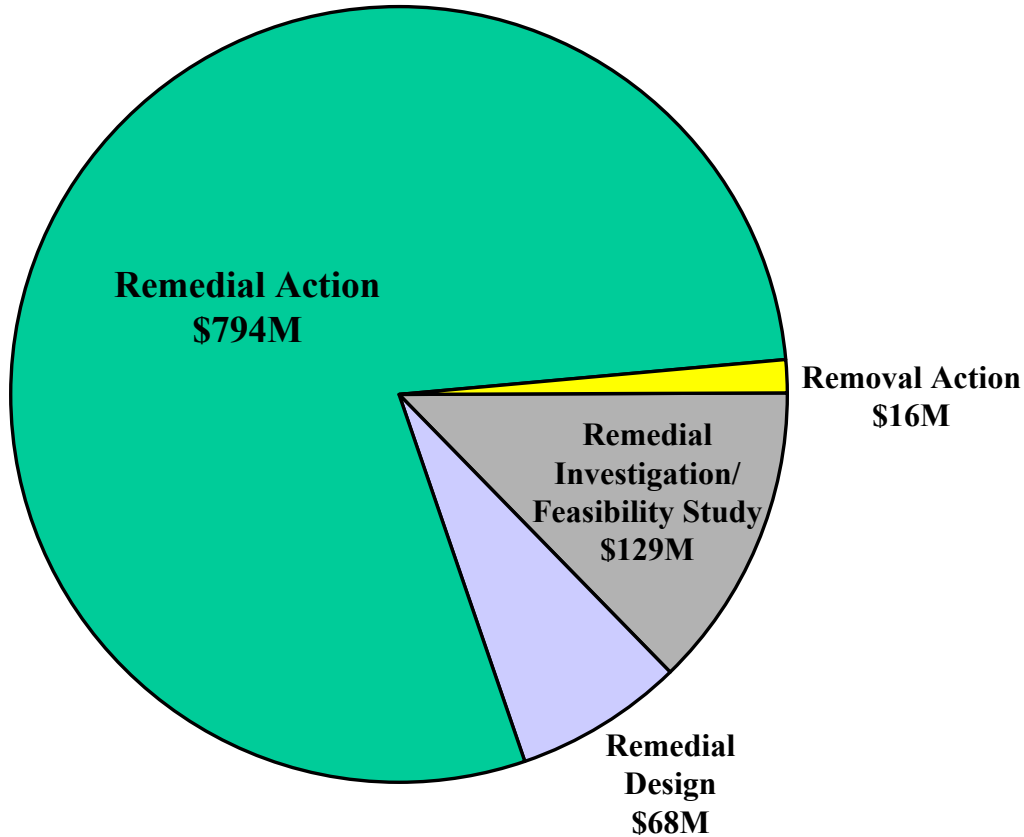


Source: Environmental Law Institute, *An Analysis of State Superfund Programs: 50-State Study*, 1989, 1990, 1991, 1993, 1995, 1998, 2000 Updates

* 2000 Fund and Bond amounts were estimated based on the percentage of change of expenditures from 1998 to 2000

Cooperative Agreement Distribution: Response Program 1988 - 2002

Note: These charts reflect funding provided through the following Cooperative Agreement types : Remedial Investigation/Feasibility Study; Remedial Design; Remedial Action/Post Construction; and Removal Actions.



Number of Sites in Each Category 1988 - 2002

RI/FS Sites: 442

RD Sites: 249

RA Sites: 204

Removal: 22

Cumulative Cooperative Agreement Response Funding,
1988 – 2002: **\$ 1,007,061,638**

*Suggested Parens around the dollar amounts have not been included since Parens mean a negative number in accounting.

Source: IFMS as of 5/08/02

Number of NPL Sites with State-lead Activities Initiated, by Fiscal Year

State-lead Activities Initiated at Sites 1980 - 1992		
Year	Number of Sites with a State-Lead Response Activity Initiated*	Number of NPL Sites Added #
1980	2	0
1981	11	0
1982	21	4
1983	30	540
1984	62	0
1985	55	273
1986	28	44
1987	39	59
1988	35	213
1989	37	63
1990	19	23
1991	13	21
1992	8	27
Subtotal	360 (28%)	1267

State-lead Activities Initiated at Sites 1993 - 2002		
Year	Number of Sites with a State-Lead Response Activity Initiated*	Number of NPL Sites Added #
1993	6	49
1994	10	34
1995	6	9
1996	5	23
1997	4	18
1998	7	34
1999	6	35
2000	7	40
2001	7	42
2002	1	2
Subtotal 93-02	59 (20%)	286
Subtotal 80-92	360 (28%)	1267
Overall Total	419 (27%)	1553

*Activity types include RI/FS, RD, RA, Long-term Remedial Actions, and Non-time Critical Removals

Includes Proposed, Current, and Deleted NPL sites

Key Policies, Guidance, and Regulations

June 5th, 1990 – 40 CFR Part 35, Subpart O, “**Cooperative Agreements and Superfund State Contracts for Superfund Response Actions**” – This regulation codifies recipient requirements for administering CERCLA-funded Cooperative Agreements. This regulation also codifies requirements for administering Superfund State Contracts (SSCs) for non-State-lead remedial responses undertaken pursuant to section 104 of CERCLA. This regulation is currently under revision to provide greater flexibility and a greater role in the Superfund program to states and tribes.

March 1995 – **Consolidated/Block Funding** – This Superfund reform offers ways for States and Tribes to realize greater flexibility in their use of Cooperative Agreement (CA) resources by allowing States and Tribes to direct CA funds between sites and activities to the extent allowed by the Advice of Allowance, by providing for the transfer of funds from among sites and activities, within the approved tasks for the cooperative agreement, without prior EPA approval, and by reducing specific administrative budget and reporting requirements, where appropriate, which can produce resource saving for both levels of government.²

July 27, 1995 **Governor Concurrence for Site Listing** – Public Law 104-19, directed EPA to obtain a letter of concurrence from the governor of a state prior to listing a site in that state on the National Priorities List. Public Law 104-19 expired three years later, but EPA, as a matter of policy to further enhance the role of states in the Superfund program, continued to require a governor’s letter of concurrence prior to NPL listing.³

Sources: 1. http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr35_00.html 2. <http://www.epa.gov/oerrpage/superfund/programs/reforms/reforms/2-12.htm>
3. <http://www.epa.gov/superfund/sites/npl/f950929.htm>

Key Policies, Guidance, and Regulations

November 14, 1996 - **Interim Approaches for Regional Relations with State Voluntary Cleanup Programs** – This reform supports effective State and Tribal voluntary cleanup programs and promotes cooperation between States, Tribes, and Regions. To support this initiative, EPA has published guidance on drafting Memoranda of Agreement (MOAs) between Regions and States. MOAs allow parties to work together to support protective cleanups and sustainable redevelopment.⁴

March 12, 1998 - **The Plan to Enhance the Role of States and Tribes in the Superfund Program** -The purpose of the Superfund Enhanced State and Tribal Role Initiative (STROLE) was to develop a comprehensive plan that EPA can implement to share Superfund Program responsibilities with interested and capable states and tribes, to enable cleanup of more sites. EPA intends for this plan to promote flexibility in the management of contaminated sites consistent with the overall goal of protecting human health and the environment.⁵

Sources: 4. <http://www.epa.gov/superfund/programs/reforms/reforms/2-10.htm> 5. <http://www.epa.gov/superfund/states/strole/index.htm>